

## **ATTACHMENT A**

### **NOVEMBER 2005 STAFF REPORT**

**CONSIDERATION OF  
ADMINISTRATIVE CIVIL LIABILITY ORDERS  
FOR  
VIRGINIA L. DRAKE, TRUSTEE  
DRAKE REVOCABLE TRUST  
HUMBOLDT ROAD BURN DUMP AREA 8, APN 011-780-014  
AND  
HUMBOLDT ROAD BURN DUMP AREA 7, APN 011-780-018  
BUTTE COUNTY**

### **BACKGROUND**

The Humboldt Road Burn Dump (HRBD) is a contiguous collection of parcels of more than 157 acres containing waste from the historic (pre-1959) disposal of municipal wastes (garbage) and/or commercial operations, including non-hazardous waste and hazardous materials. Studies conducted at the HRBD site by City of Chico (City) consultants characterized the waste, delineated the extent of contamination, and confirmed the need for further remediation on several properties. Studies show that the HRBD included waste containing lead exceeding hazardous waste levels in many locations and significant other hazardous and non-hazardous waste constituents that pose a threat to human health and the environment, including waters of the state.

Staff of the Central Valley Water Quality Control Board (Regional Board) has been involved in the HRBD for nearly two decades. The Regional Board and/or the Executive Officer have issued cleanup and abatement orders and waste discharge requirements and approved environmental documents and cleanup plans for this site. The Discharger named in the proposed administrative civil liability (ACL) order has not challenged any of the past actions of the Regional Board or Executive Officer, in particular did not challenge the 1998 and 2003 cleanup and abatement orders (CAOs) that apply to the parcels that are the subject of this ACL order. The purpose of the ACL is to enforce for failure to comply with the 2003 CAO. The issue raised by the ACL Orders is not who is responsible for the Area 7 and 8 waste cleanup, but who is responsible for the failure to remove wastes (containing hazardous lead levels) from Area 7 and 8 during the 2005 construction season (ending on 15 August 2005 - the start of the school year at the nearby Hank Marsh Jr. High School).

This Staff Report provides a summary of the record, including background information, and an analysis of the factors required to support an ACL Order for Virginia L. Drake, Trustee, Drake Revocable Trust, Humboldt Road Burn Dump Area 7, Assessor's Parcel Number (APN) 011-780-018 and an ACL Order for Virginia L. Drake, Trustee, Drake Revocable Trust, Humboldt Road Burn Dump Area 8, APN 011-780-014. Staff prepared

and the Executive Officer issued separate ACL Orders because the wastes discharged or placed on the two parcels (Areas 7 and 8) were of varying origin and were subject to different Regional Board enforcement orders and administrative oversight designations by California Environmental Protection Agency (Cal/EPA).

#### Parcel Information

The APN 011-780-014 property is currently 10.18 acres of essentially unimproved land near the intersection of Stilson Canyon and Humboldt Roads, in Chico, California. In the past, the parcel was part of a larger unimproved holding called the Simmons Ranch. The APN 011-780-014 property is also referred to as Area 8 of the HRBD.

The APN 011-780-018 property is currently 7.13 acres of essentially unimproved land near the intersection of Stilson Canyon and Humboldt Roads, in Chico, California. In the past, the parcel was also part of a larger 98 acre APN 011-050-116. The APN 011-780-018 property is also referred to as Area 7 of the HRBD.

The current listed owners of HRBD Area 7 and Area 8 are Virginia L. Drake, the Drake Revocable Trust, James E. Simmons, Darwin H. Simmons, Nina R. Simmons, and the Simmons Family Trust. These parcels were formerly owned, in part, by John D. Drake. On 21 February 2001, John D. Drake deeded his ½ interest in the properties to himself and Virginia L. Drake as trustees of the Drake Revocable Trust (which was created on 23 January 2001). John D. Drake died on 22 November 2001. Virginia L. Drake, through the Drake Revocable Trust owns an undivided 50% interest, James E. Simmons owns an undivided 25% interest, and Darwin H. Simmons and Nina R. Simmons, through the Simmons Family Trust, own an undivided 25% interest in both parcels that comprise Areas 7 and 8. The City of Chico and Chico Redevelopment Agency never owned Area 7 or Area 8. The Drake-Simmons parcels are shown on Attachment B, which is part of this Staff Report.

#### Civil Case to Partition Parcels

On 3 March 2003, Virginia L. Drake, Drake Revocable Trust (hereafter Discharger) filed civil action in Butte County Superior Court (Case #129127) against James Edward Simmons and Jean Simmons, and Darwin Harold Simmons and Nina Rae Simmons, as co-trustees of the Simmons Family Trust (hereafter the Simmons) to partition APN 011-780-014, APN 011-780-018, and other properties the Discharger owns with the Simmons. Court action on the case is pending. Currently, a trial date for the partition action is set for 13 February 2006.

#### Waste Characteristics and Volume - Area 7

In the past, a battery recycling facility is suspected of having operated in Area 7. Historic aerial photographs taken of the suspected battery recycling facility indicated that from 1937 until 1962, small structures are visible that are consistent with that type of operation. No structures are visible in Area 7 in photographs taken in 1975.

On 23 March 2000, soil samples were collected from Area 7 and the analyses showed the presence of lead at concentrations ranging from 27.9 mg/Kg to 8,340 mg/Kg, and pH ranging from 6.05 to 6.88 Units. These constituents constitute waste as defined in CWC section 13050. The Discharger estimates that the volume of waste is approximately 500 cubic yards.

Waste Characteristics and Volume - Area 8

In 1982, the City of Chico proposed to construct a two-lane extension from the intersection of Humboldt and Bruce Roads, northerly to State Highway 32 (the Bruce Road Extension Project). The City of Chico prepared an initial study, determined that the project would not have a significant environmental impact, and subsequently prepared a Negative Declaration. On 30 June 1982, the City of Chico approved the Negative Declaration and, on 13 April 1983, filed a Notice of Determination for the Bruce Road Extension Project.

On 20 July 1987, the City of Chico awarded the construction contract for the Bruce Road Extension Project to Baldwin Contracting Company, Inc., (Baldwin). The contract specifies that disposal of surplus construction material is the responsibility of the contractor. Baldwin excavated 31,700 cubic yards of material from the roadbed and, after obtaining permission from adjacent property owners, disposed of the surplus material on four HRBD properties (currently known as Area 3W).

On 13 August 1987, James E. Simmons granted Baldwin and the City of Chico permission to dispose of surplus material from the Bruce Road Extension Project on Area 8 (the Simmons Ranch property). A stock pond levee was constructed on the property. On 16 September 1987, in response to complaints from citizens, Regional Board staff collected soil samples from the stock pond levee. Analyses of the samples showed the presence of polynuclear aromatic hydrocarbons at concentrations ranging from 2.3 µg/Kg to 84.9 µg/Kg, copper at concentrations ranging from 560 mg/Kg to 1,400 mg/Kg, total chromium at concentrations ranging from 75 mg/Kg to 110 mg/Kg, lead at concentrations ranging from 2,000 mg/Kg to 3,400 mg/Kg, and other metals. These constituents constitute waste as defined in CWC section 13050. The Discharger estimates that the volume of waste in the stock pond levee is approximately 7,500 cubic yards. Areas 7 and 8 are fenced and posted, in accordance with a 9 March 1992 Department of Toxic Substances Control order.

Cal/EPA Site Designation

In October 1997, the City of Chico, a responsible party as defined in Health and Safety Code Section 25260(h), requested the Cal/EPA Site Designation Committee designate an administering agency to oversee site investigation

and remedial action at the HRBD.<sup>1</sup> On 11 December 1997, the Site Designation Committee adopted Resolution No. 97-16 designating the Regional Board as the administering agency. Area 8 is one of 13 parcels (with several owners) included in Resolution No. 97-16. Area 7 is not part of that site designation action.

## ISSUE

The proposed ACL Orders would assess liability against Virginia L. Drake, the Drake Revocable Trust (Discharger), and not other parties named in the 2003 cleanup and abatement order. Information included in the record supports the proposed ACL Orders conclusions that only the Discharger should be named in the ACL Orders because the Discharger took actions demonstrating that the Discharger was in control of the cleanup and precluded others from complying with the 2003 CAO. The Discharger made it clear that the Discharger was in charge of remediation activities for Areas 7 and 8 in 2004 and early 2005, but ceased all efforts to complete cleanup at a time that precluded the possibility of other parties listed in the 2003 CAO from proceeding with cleanup in 2005. The Discharger initiated remediation by hiring and authorizing consultants to perform remediation related work (Discharger represented to Regional Board staff that it was in charge of these consultants) and by starting the lengthy process to secure necessary permits from other regulatory agencies needed to implement cleanup activities. In a letter dated 15 April 2005 from Virginia L. Drake to the Regional Board, Ms. Drake stated that she informed the Butte County Air Quality Management District (Air District) that she “was not proceeding any further with cleanup at this time.” This notification was made following more than a year of effort on the part of the Discharger to seek approvals and permits to complete cleanup of the two parcels during the 2005 construction season. More critically, this notification precluded the possibility of another applicant receiving an “Authority To Construct” permit from the Air District in time to initiate and complete remediation activities prior to 15 August 2005, the last date for transport of wastes authorized by the Regional Board and the Air District.

It is also important to note that three other HRBD property owners took control of the cleanup for others, successfully acquired necessary permits, removed wastes and contaminated soils and disposed of these materials in disposal cells permitted by the Regional Board. The only hazardous materials remaining at the HRBD are those on the two parcels (Areas 7 and 8) that are subject of the proposed ACL Orders.

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<sup>1</sup> Health and Safety Code section 25260 et seq. authorize a responsible party to request a committee, made of representatives of five Cal/EPA agencies and the Department of Fish and Game, - the Site Designation Committee - to designate an administering agency that would then have the sole jurisdiction over the investigation and remediation of the site, including enforcement actions. The administering is required to assure that all applicable state and local laws that apply to investigation and cleanup are complied with. At the completion of the cleanup, the responsible parties are given a certificate of completion that shields the site from further enforcement actions.

Below is a summary of remediation and CAO compliance efforts at HRBD in 2004 and 2005.

<b>PROPERTY OWNER THAT TOOK CONTROL OF CLEANUP FOR OTHERS</b>	<b>NUMBER OF PARCELS</b>	<b>WASTE REMOVED (cubic yards)</b>
Thomas and Mary Fogarty Revocable Trust	6	180,000
Chico Redevelopment Agency	6	65,000
New Urban Builders	1	1,800
Virginia L. Drake, Trustee, Drake Revocable Trust	2	0 (8,000 remains)

## **PREVIOUS REGIONAL BOARD HRBD ENFORCEMENT**

### Area 8

On 27 January 1988, the Regional Board Executive Officer issued Cleanup and Abatement Order No. 88-700 (hereafter, the 1988 CAO), pursuant to California Water Code section 13304, requiring John D. Drake, James E. Simmons, and the City of Chico remove the Area 8 waste. In an effort to identify all the HRBD waste material and evaluate the threats to human health and the environment, including water quality, Regional Board staff deferred enforcement of the 1988 CAO until investigation of other HRBD properties could be completed. The 1988 CAO is still in effect, but is not the subject of the Area 8 ACL Order because the Discharger is not named in the CAO. The City and James E. Simmons are named in the 1988 CAO, but are not the subject of the Area 8 ACL Order because others (the Discharger) had made clear they intended to clean up the Area 8 waste by 15 August 2005. The Discharger's actions do not relieve the City of Chico and James E. Simmons of their responsibility for the Area 8 waste.

### Areas 7 and 8

On 3 June 2003, the Regional Board Executive Officer issued Cleanup and Abatement Order No. R5-2003-0707 (hereafter, the 2003 CAO), to the reasonably identifiable parties responsible for the waste at the designated areas comprising the HRBD. The 2003 CAO defines HRBD by listing 15 parcels owned by various parties, including Areas 7 and 8 that are subject to the ACL Orders.

The 2003 CAO requires the dischargers named in the CAO to investigate, cleanup, and abate the effects of waste resulting from activities at the HRBD beginning 1 June 2004. The 2003 CAO does not specify a single responsible party to cleanup the fifteen parcels, but requests each individual named in the 2003 CAO to submit written notification describing if they wish to maintain the City of Chico as lead responsible party and allow access to their respective properties for the purposes of investigation and cleanup or whether they intend to cleanup their own parcels. The 2003 CAO required the responsible parties to submit a remedial action plan (RAP) containing a time schedule for completion of the cleanup. Upon approval of the RAP and time schedule, the RAP and time schedule became an enforceable part of the 2003 CAO.

The City based upon its application to the Site Designation Committee under Health and Safety Code section 25260 et seq., had originally intended to cleanup all 13 parcels and place the waste in one HRBD onsite location, but due to various factors ultimately decided to cleanup only certain parcels. The City offered to include waste from other parcels in their RAP, but made clear that participation in the City's cleanup was contingent upon negotiation of cost-sharing arrangements with other responsible parties, determination of whether insurance coverage is available, indemnification of the City by private property owners, and agreement that the City would contribute to the cost of cleanup of private properties only to the extent that the City was found to have some responsibility.

### **RECENTLY COMPLETED REMEDIATION**

In response to the City's action to cleanup only selected parcels, the Discharger, Thomas and Mary Fogarty Revocable Trust, and New Urban Builders decided to cleanup the waste themselves. The Thomas and Mary Fogarty Revocable Trust took responsibility to remediate parcels they owned and parcels currently owned by Borge Development. On 10 August 2005, excavation and removal of HRBD waste from these five parcels was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board. (Fogarty started and completed cleanup of one parcel in 2004. The Executive Officer issued a certificate of completion for this parcel on 10 March 2005).

The New Urban Builders took responsibility to remediate its parcel, formerly owned by Pleasant Valley Assembly of God. On 2 August 2005, excavation and removal of HRBD waste from this parcel was completed. The waste was disposed at Norcal Systems, Ostrom Road Class II Landfill, which is regulated pursuant to waste discharge requirements issued by the Regional Board.

The City through the Chico Redevelopment Agency (CRDA) took responsibility for 6 parcels. On 12 August 2005, excavation and removal of HRBD waste from these six parcels was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.

As of 12 August 2005 all parcels at the HRBD have been cleaned up, with exception of Areas 7 and 8 owned by the Discharger and the Simmons parties. In all, approximately 260,000 cubic yards of HRBD waste was excavated and placed in permitted disposal cells by the 2003 CAO deadline of 15 August 2005.

### **REMEDATION EFFORTS BY DISCHARGER (AREAS 7 and 8)**

On 13 February 2004, the Discharger submitted to Regional Board staff a notice of intent to submit a separate Remedial Action Plan for Area 7 and 8 to comply with the 2003 CAO, rather than relying on the City. On 15 March 2004, the Discharger submitted

a monthly technical report committing to clean up the Areas 7 and 8 waste. Subsequently, the Discharger notified Regional Board and City staffs of the Discharger's intent to remediate Areas 7 and 8 by the summer of 2004, if possible.

On 8 July 2004, the Discharger joined with other private parties to submit a Final RAP for Humboldt Road Private Properties Operational Unit (the Fogarty cleanup) that included Areas 7 and 8 and six other properties. The RAP proposed excavation and off-site disposal as the preferred remedial alternative for Areas 7 and 8. The RAP proposed a time schedule to submit initial engineering design plan documents by 11 June 2004. The Executive Officer approved the RAP and time schedule on 8 July 2004. Upon approval of the RAP by the Executive Officer, the time schedule became an enforceable part of the 2003 CAO. On 13 July 2004, Regional Board staff requested the Discharger submit a Remedial Design and Implementation Plan (RDIP) on or before 13 August 2004. On 28 July 2004, the Discharger notified Regional Board staff that it intended to immediately develop and submit an RDIP and seek permits from other agencies to allow remediation work to begin in Spring 2005.

On 3 September 2004, the Discharger decided to re-sample Areas 7 and 8 to determine if the estimated volume of waste in their RAP was accurate. Regional Board staff approved the Discharger's work plan and requested results by 1 January 2005. Subsequently, the Discharger requested an extension to submit the re-sampling results and, since the Discharger had not submitted the RDIP required by the 2003 CAO, staff requested the Discharger incorporate the re-sampling results into the RDIP and submit the combined report by 15 February 2005. The Discharger's draft RDIP submitted on 15 February 2005 contained numerous errors; therefore, at the Discharger's request, the draft RDIP was returned to the Discharger for correction.

On 10 September 2004, the Discharger notified the Simmons of the Discharger's intent to manage and obtain all necessary permits to cleanup the Areas 7 and 8 waste during Summer 2005. The Discharger proposed to allocate cleanup costs based on the percentage of property ownership and committed to keep the total overall cleanup costs to a minimum. The Simmons indicated in writing they would pay the Discharger their fair share of the cleanup costs.

On 17 February 2005, the Discharger denied the CRDA's request to execute an Agreement for Right of Entry to place, operate or maintain air-monitoring equipment on Areas 7 and 8 during the Agency's remediation of six HRBD properties. The denial, in the form of a letter, indicated that the Discharger did not want anything interfering with its summer 2005 cleanup of Areas 7 and 8. The Simmons' had previously signed the CRDA's agreement, "subject to the approval of Virginia Drake."

On 10 March 2005, the Discharger submitted an incomplete RDIP, which contained three cleanup alternatives for Areas 7 and Area 8. The Discharger selected Alternative 3, the trucking of the 500 cubic yards of Area 7 waste and 7,500 cubic yards of Area 8 waste to a Class 1 landfill, approximately 300 miles from the site, at an estimated total cost of \$1,4000,000. Alternative 1 and 3, not selected by the Discharger, involved disposal of the waste at designated sites at HRBD at an estimated cost of \$200,000.<sup>2</sup>

The Discharger's re-sampling results, reported in the 10 March 2005 RDIP, estimate the volume of waste in Area 7 at 500 cubic yards, which is less than the 2,500 cubic yards reported in the RAP. The Discharger's estimated volume of waste in Area 8 is 7,500 cubic yards, which is more than the 7,000 cubic yards reported in the RAP. The technical information needed for the RDIP (e.g., nature and design of construction equipment, transportation plan, traffic control plan, post remedial sampling, schedule for submitting permit applications, etc.) did not require the Discharger to re-sample Areas 7 and 8. Therefore, the Discharger could have submitted the RDIP, on or before 13 August 2004, as required.

On 11 April 2005, the Simmons notified the Discharger that they agreed with the plan to cleanup the waste at the lower estimated total cost of \$200,000 (either Alternative 1 or 2). The Discharger did not object to the Simmons cleaning up Areas 7 and 8 at the Simmons' expense. However, on 15 April 2005, the Discharger submitted to Regional Board staff a notice that it will require the Simmons and other parties to comply with unspecified conditions prior to the cleanup. The Discharger made clear to Regional Board staff that the Discharger had assumed responsibility for cleanup of Areas 7 and 8, was so authorized by the Simmons as co-owners to complete the cleanup, was in control of the cleanup activities as indicated by contact with permitting agencies, and had the financial ability to complete cleanup activities, in part through an agreement with the Simmons.

The CRDA consolidation cell was not filled to design capacity with waste from the CRDA parcels. The CRDA consolidation cell had sufficient capacity for the Area 7 and 8 waste. The CRDA had offered the Discharger the opportunity to place the waste from Area 7 and 8 into the cell during the 2005 construction season. The Discharger, however, had failed to complete applications or secure regulatory permits and agreements necessary for cleanup of Area 7 and 8 and had indicated its intent not to select HRBD as a disposal site. As late as 1 August 2005, there was sufficient capacity in the CRDA consolidation cell to accept all waste from Areas 7 and 8 as 14,000 cubic yards of "clean fill" were required to achieve final design grade.

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<sup>2</sup> The estimated total costs for remediation include both Area 7 and Area 8. The portion of the estimated remediation costs attributed to Area 7 are; \$87,500 to transport the waste to a Class 1 landfill and \$12,500 to consolidate the waste at the HRBD. The portion of the estimated remediation costs attributed to Area 8 are; \$1,312,500 to transport the waste to a Class 1 landfill and \$187,500 to consolidate the waste at the HRBD.



The City and CRDA do not own or have control over Area 8 and, therefore, could not remediate the site without permission of the Discharger. The Discharger, in fact, denied CRDA access to both Area 7 and Area 8 for placement of air monitoring equipment required by the Butte County Air Quality Management District (BCAQMD). Thomas and Mary Fogarty Revocable Trust, Borge Development, and New Urban Builders were not and are not considered responsible parties for Areas 7 or 8 waste with respect to the 2003 CAO.

Both the 1988 and 2003 CAOs named the City as a responsible party for Area 8, but the City disagrees with that conclusion.<sup>3</sup> Documents submitted by the City indicate that the contractor (Baldwin), not the City, was responsible for the excavated soils from the Bruce Road Extension Project that was placed in Area 8 and other HRBD parcels. On 10 September 2004, the City offered the Discharger and Baldwin \$150,000 to ensure Area 8 was cleaned up. The Discharger rejected the City's offer. With the exception of Area 8, the Bruce Road Extension Project wastes were cleaned up and disposed properly by the current owners of the affected parcels. Regional Board staff consider the City to be a responsible party for Area 8, however, as described in this staff report and the proposed ACL Order, the Executive Officer has concluded based on known information that the Discharger is the most culpable party for the violations of the 2003 CAO.

## **DISCHARGER VIOLATIONS AND CONSIDERATIONS OF ACL FACTORS**

In determining the amount of any civil liability pursuant to CWC Section 13327, the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require.

### **Area 8 Violations**

The Discharger has failed to obtain regulatory permits necessary for cleanup of Area 8 waste, remove waste from Area 8, submit four monthly technical reports, submit a regulatory permitting technical report, and submit an off-site disposal alternative/revised transportation plan technical report. For Area 8, staff has determined the following with respect to the factors in CWC Section 13327.

Nature and Circumstances - The nature of the violations is that the Discharger failed to obtain permits necessary to proceed with cleanup in compliance with the 2003 CAO, failed to cleanup the waste in compliance with the 2003 CAO, failed to submit technical reports as required by the 2003 CAO, and failed to complete technical

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<sup>3</sup> There were no challenges to the issuance of the 1988 CAO. All petitions challenging the 2003 CAO have been dismissed by the State Water Resources Control Board. The Discharger was not involved with the parcels at the time of the 1988 CAO and did not challenge the 2003 CAO before the State Board.

documents necessary to assure compliance with mitigation measures in the California Environmental Quality Act Environmental Impact Report with respect to transportation of waste.

The circumstances are that the Discharger did not contest issuance of (petition or otherwise challenge) the 2003 CAO or CWC section 13267 Technical Report Orders and was aware of the required dates to submit permits, remove Area 8 waste, submit monthly technical reports for the Area 8 waste, submit a regulatory permitting technical report for the Area 8 waste, and submit an off-site disposal alternative/revised transportation plan technical report for the Area 8 waste.

Extent - The extent of the violations for Area 8 wastes are that, as of 23 September 2005, complete applications for the required regulatory permits to remove waste have not been submitted, the waste has not been removed, the May, June, July, and August 2005 monthly technical reports have not been submitted, a regulatory permitting technical report has not been submitted, and an off-site disposal alternative/revised transportation report has not been submitted.

Gravity - The gravity of the violations is that the waste was not cleaned up in a timely manner, that it continues to pose a threat to the human health and the environment, and that staff and other public resources are wasted on continued efforts to obtain compliance.

In particular, the Discharger failed to submit complete applications to allow regulatory agencies time to issue the required regulatory permits to remove the Area 8 waste during summer 2005, while other HRBD wastes were undergoing cleanup and while there was sufficient capacity in two adjacent and permitted disposal cells to accept Area 8 waste. The Discharger's failure to obtain the required permits has increased the disposal costs for the Area 8 waste, which may need to be transported 300 miles away (Alternative 3) instead of on adjacent parcels (Alternatives 1 or 2).

The Discharger failed to remove the Area 8 waste as required before 15 August 2005. Waste removal activities are not permitted while Hank Marsh Jr High School is in session (August 16 to May 26) and, therefore, will not be able to be removed until next summer. The waste will continue to pose a threat to human health and the environment, including waters of the state for nearly another year. Rain and wind may result in erosion and dispersion of the waste from Area 8. Although the Area 8 waste is fenced and posted, it also creates a condition of nuisance.

The Discharger's failure to submit monthly technical reports has resulted in no communication between the Discharger and Regional Board staff. Without communication, Regional Board staff is unable to assist the Discharger in maintaining compliance with the 2003 CAO or to assure protection of human health and the environment.

At the request of Regional Board staff, state and local regulatory permitting agencies were prepared to expeditiously process the Discharger's permit applications so cleanup of the Area 8 waste could occur in summer 2005. The Discharger's failure to comply with orders to seek required Permits is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

The Discharger's failure to complete the transportation plan prevented the Regional Board staff from assessing the impact of the cleanup alternative on other cleanups occurring at the HRBD and to address community concerns about potential traffic issues in the area. The Discharger's failure to comply with orders to submit an adequate traffic plan is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

Ability to Pay/Continue in Business - With respect to the Discharger, it has not been demonstrated that there is an inability to pay or to continue in business. The Discharger was informed of the opportunity to provide such information when it received the ACL Complaint.

Voluntary Cleanup Efforts Undertaken - The Discharger has not undertaken voluntary cleanup efforts, hence the issuance of the 2003 CAO and the ACL complaint.

Degree of Culpability - With respect to degree of culpability, the Discharger has made clear to Regional Board staff that the Discharger has assumed responsibility to cleanup the parcel to the exclusion of other responsible parties, was authorized by Simmons as part owners of the parcel to cleanup the parcels, was in control of the cleanup activities as indicated by contact with permitting agencies, and has the financial ability, in part through an agreement with the Simmons, to cleanup the Area 8 waste. The Discharger was aware of the requirements and chose not to comply. Submitting the required permit applications and technical reports should have taken minimal effort. The Discharger is, therefore, fully culpable for the violations. As described in this Staff Report and the findings of the proposed Order, the Discharger was provided opportunities to dispose of the waste in the consolidation cell constructed by the City, but declined, and could have taken the waste offsite, but failed to do so.

Economic Savings - With respect to economic savings, the Discharger has benefited by delaying the expenditure of funds necessary to complete the required regulatory permit applications, cleanup the Area 8 waste, and complete the required technical reports. At a minimum, based on a rate of 5% per annum, the Discharger has benefited by \$52,327 in interest savings by failing to complete five regulatory permit applications and complete the Area 8 waste cleanup by 15 August 2005. The Discharger has benefited, a minimum of \$6,000, by failing to submit the four monthly technical reports, a regulatory permitting report, and an off-site disposal/revised transportation report. The Discharger's total minimum economic savings, as shown in Attachment A of this

report, is \$58,327. Further, the Discharger's failure has resulted in significantly increasing cleanup costs for the Area 8 waste from \$187,500 (Alternative 1 or 2) to \$1,312,000 (Alternative 3).

Other Matters as Justice May Require – The Discharger is only a 50 percent owner of Areas 7 and 8, but clearly exhibited apparent control of activities on the parcels. For example, approval was given by the minority property owners to allow the CRDA to place air monitoring equipment (required by the BCAQMD) on Areas 7 and 8. However, the Discharger, obviously in control of access to Areas 7 and 8, denied “right of entry” and demanded that the air-monitoring equipment be removed and placed on property not under the Discharger's control. The Discharger exhibited similar control over cleanup activities related to compliance with the 2003 CAO. The Discharger's sudden cessation of compliance activities at a “point-in-time”, clearly precluded other property owners from proceeding with cleanup during the 2005 construction season. In addition, Regional Board staff expended approximately 75 hours, or \$6,000 in staff costs in generation of the original ACL complaint and preparation of the agenda material for the Regional Board presentation. The hours have been reported to the State Water Resources Control Board SLIC Program database for future invoicing to the Discharger.

Prior History of Violations - The Discharger does not have a history of previous violations for discharges not related to the HRBD.

Determination of Amount – Area 8

The Discharger has violated a CAO and, therefore, is subject to civil liability pursuant to Water Code section 13350(a)(1) and (e)((1)(B). Since 28 July 2004, the Discharger has failed to obtain the regulatory permits necessary for cleanup of Area 8 to begin and; therefore, as of 23 September 2005, the Discharger has been in violation of the 2003 CAO for 422 days. Since 15 August 2005, the Discharger has failed to remove waste from Area 8 and; therefore, as of 23 September 2005, the Discharger has been in violation of the 2003 CAO for 39 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum ACL is \$2,305,000 ((422 + 39) days times \$5,000 per day) and the minimum ACL is \$46,100 ((422 + 39) days times \$100 per day).

Since 15 June 2005, in violation of the 2003 CAO, the Discharger has failed to submit the May 2005 monthly technical report for the Area 8 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 100 days. Since 15 July 2005, in violation of the 2003 CAO, the Discharger has failed to submit the June 2005 monthly technical report for the Area 8 wastes and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 70 days. Since 15 August 2005, in violation of the 2003 CAO, the Discharger has failed to submit the July 2005 monthly technical report for the Area 8 waste and; therefore, as

of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 39 days. Since 15 September 2005, in violation of the 2003 CAO, the Discharger has failed to submit the August 2005 monthly technical report for the Area 8 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 8 days. Since 20 April 2005, the Discharger has failed to submit a regulatory permitting technical report for the Area 8 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 156 days. Since 1 May 2005, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 8 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 145 days. The maximum ACL that can be imposed by the Regional Board under CWC Section 13268 is \$1,000 for each day. Therefore, the maximum ACL is \$518,000 ((100 + 70 + 39 + 8 + 156 + 145) days times \$1,000 per day).

The maximum ACL allowed pursuant to CWC Section 13350 and 13267 is \$2,823,000 (\$2,305,000 + \$518,000). The minimum ACL allowed pursuant to CWC Section 13350 is \$46,100.

Administrative Civil Liability Complaint Order No. R5-2005-0525 (Area 8)

On 23 September 2003, the Regional Board Executive Officer issued ACL Complaint No. R5-2005-0525 in the amount of \$125,000 to the Discharger for violations of the 2003 CAO, including failure to obtain regulatory permits necessary for cleanup of Area 8 waste, to remove waste from Area 8, to submit monthly technical reports, to submit a regulatory permitting technical report, and to submit an off-site disposal alternative/revised transportation plan technical report. The ACL Complaint No. R5-2005-0525 is greater than the Discharger's economic savings (\$58,327) and the minimum ACL allowed pursuant to CWC Section 13350 (\$46,100). The ACL Complaint No. R5-2005-0525 was not paid or settled.

Area 7 Violations

The Discharger has failed to obtain regulatory permits necessary for cleanup of Area 7 waste, remove waste from Area 7, submit payment for Invoice Number 42726, submit monthly technical reports, submit a regulatory permitting technical report, and submit an off-site disposal alternative/revised transportation plan technical report. For Area 7, staff has determined the following with respect to the factors in CWC Section 13327.

Nature and Circumstances - The nature of the violations is that the Discharger failed to obtain permits necessary to proceed with cleanup in compliance with the 2003 CAO, failed to cleanup the waste in compliance with the 2003 CAO, failed to pay oversight costs in compliance with invoices from the State Water Resources Control Board and as required by the 2003 CAO, failed to submit technical reports as required by the 2003 CAO, and failed to complete technical documents necessary to assure compliance with mitigation measures in the California Environmental Quality Act Environmental Impact Report with respect to transportation of waste.

The circumstances are that the Discharger did not contest adoption of the 2003 CAO or CWC section 13267 Technical Report Orders and was aware of the required dates to submit permits, remove the Area 7 waste, submit payment for State Water Resources Control Board SLIC Program Invoice Number 42726, submit monthly technical reports for the Area 7 waste, submit a regulatory permitting technical report for the Area 7 waste, and submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste.

Extent - The extent of the violations for Area 7 wastes are that, as of 23 September 2005, complete applications for the required regulatory permits to remove waste have not been submitted, the waste have not been removed, the May, June, July, and August 2005 monthly technical report has not been submitted, a regulatory permitting technical report has not been submitted, and an off-site disposal alternative/revised transportation report has not been submitted.

Gravity - The gravity of the violations is that the waste was not cleaned up in a timely manner, that it continues to pose a threat to the environment and public health, and that staff and other public resources are wasted on continued efforts to obtain compliance.

In particular, the Discharger failed to submit complete applications to allow regulatory agencies time to issue the required regulatory permits to remove the Area 7 waste during Summer 2005, when closure of the adjacent units was occurring. The Discharger's failure to obtain the required permits has increased the disposal costs for the Area 7 waste, which will need to be transported 300 miles away (Alternative 3) instead of across Humboldt Road (Alternatives 1 or 2).

The Discharger failed to remove the Area 7 waste as required before 15 August 2005. Waste removal activities are not permitted while Hank Marsh Jr High School is in session (August 16 to May 26) and, therefore, will not be able to be removed until next summer. The waste will continue to pose a threat to human health and the environment, including waters of the state for nearly another year. Rain and wind may result in erosion and dispersion of the waste from Area 7. Although the Area 7 waste is fenced and posted, it also creates a condition of nuisance.

The Discharger failed to submit payment for oversight costs. The Discharger's failure to submit such payment undermines the State Water Resources Control Program Cost Recovery Program and is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

The Discharger's failure to submit monthly technical reports has resulted in no communication between the Discharger and Regional Board staff. Without communication, Regional Board staff is unable to assist the Discharger in maintaining compliance with the 2003 CAO or to assure protection of public health and the environment.

At the request of Regional Board staff, state and local regulatory permitting agencies were prepared to expeditiously process the Discharger's permit applications so cleanup of the Area 7 waste could occur in Summer 2005. The Discharger's failure to comply with orders to seek required permits is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

The Discharger's failure to complete the transportation plan prevented the Regional Board staff from assessing the impact of the cleanup alternative on other cleanups occurring at the HRBD and to address community concerns about potential traffic issues in the area. The Discharger's failure to comply with orders to submit an adequate traffic plan is a priority violation, as defined in the State Water Resources Control Board Water Quality Enforcement Policy.

Ability to Pay/Continue in Business - With respect to the Discharger, it has not been demonstrated that there is an inability to pay or to continue in business. The Discharger was notified of the opportunity to provide such information when the ACL Complaint was issued and has not submitted information to date.

Voluntary Cleanup Efforts Undertaken - The Discharger has not undertaken voluntary cleanup efforts, hence the issuance of the 2003 CAO and the ACL Complaint.

Degree of Culpability- With respect to degree of culpability, the Discharger has made clear to Regional Board staff that the Discharger has assumed responsibility to cleanup the parcel to the exclusion of other responsible parties, was authorized by Simmons as part owners of the parcel to cleanup the parcels, was in control of the cleanup activities as indicated by contact with permitting agencies, and has the financial ability, in part through an agreement with the Simmons, to cleanup the Area 7 waste. The Discharger was aware of the requirements and chose not to comply. Submitting the required permit applications and technical reports should have taken minimal effort. As described in this staff report and the findings of the proposed Order, the Discharger was provided opportunities to dispose of the waste in the consolidation cell constructed by the City but declined, and could have taken the waste offsite, but failed to do so. The Discharger is therefore fully culpable for the violations.

Economic Savings - With respect to economic savings, the Discharger has benefited by delaying the expenditure of funds necessary to complete the required regulatory permit applications, cleanup the Area 7 waste, and complete the required technical reports. At a minimum, based on a rate of 5% per annum, the Discharger has benefited by \$4,837 in interest savings by failing to complete five regulatory permit applications and complete the Area 8 waste cleanup by 15 August 2005. The Discharger has benefited, a minimum of \$6,000, by failing

to submit the four monthly technical reports, a regulatory permitting report, and an off-site disposal/revised transportation report. In addition, the Discharger has benefited \$3,415.22 by failing to submit payment for Invoice Number 42726. The Discharger's total minimum economic savings, as shown in Attachment A of this report, is \$14,352.22. Further, the Discharger's failure has resulted in significantly increasing cleanup costs for the Area 7 waste from \$12,500 (Alternative 1 or 2) to \$187,500 (Alternative 3).

Other Matters as Justice May Require - The Discharger is only a 50 percent owner of Areas 7 and 8, but clearly exhibited apparent control of activities on the parcels. For example, approval was given by the minority property owners to allow the CRDA to place air-monitoring equipment (required by the BCAQMD) on Areas 7 and 8. However, the Discharger, obviously in control of access to Areas 7 and 8 denied "right of entry" and demanded that the air-monitoring equipment be removed and placed on property not under the Discharger's control. The Discharger exhibited similar control over cleanup activities related to compliance with the 2003 CAO. The Discharger's sudden cessation of compliance activities at a "point-in-time," clearly precluded other property owners from proceeding with cleanup during the 2005 construction season.

In addition, Regional Board staff expended approximately 75 hours, or \$6,000 in staff costs in generation of the original ACL complaints and preparation of the agenda material for the Regional Board presentation. The hours have been reported to the State Water Resources Control Board SLIC Program database for future invoicing to the Discharger.

Prior History of Violations - The Discharger does not have a history of previous violations for discharges not related to the HRBD.

Determination of Amount – Area 7

The Discharger has violated a cleanup and abatement order and, therefore, is subject to civil liability pursuant to Water Code section 13350(a)(1) and (e)(1)(B). Since 28 July 2004, the Discharger has failed to obtain the necessary regulatory permits and initiate Area 7 waste cleanup and; therefore, as of 23 September 2005, the Discharger has been in violation of the 2003 CAO for 422 days. Since 15 August 2005, the Discharger has failed to remove waste from Area 7 and; therefore, as of 23 September 2005, the Discharger has been in violation of the 2003 CAO for 39 days. Since 23 July 2005, the Discharger has failed to submit payment to reimburse Regional Board staff oversight costs for the 1 January through 31 March 2005 billing period (Invoice Number 42726), and; therefore, as of 23 September 2005 the Discharger has been in violation of the 2003 CAO for 62 days. The maximum liability that can be imposed by the Regional Board under CWC section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum administrative liability is \$2,615,000 ((422 + 39 + 62) days times \$5,000 per day) and the minimum liability is \$52,300 (422 + 39 + 62 days times \$100 per day).



The Discharger is subject to civil liability pursuant to Water Code section 13268(b) for failing to submit technical or monitoring reports required pursuant to Water Code section 13267. Since 15 June 2005, in violation of the 2003 CAO, the Discharger has failed to submit the May 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 100 days. Since 15 July 2005, in violation of the 2003 CAO, the Discharger has failed to submit the June 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 70 days. Since 15 August 2005, in violation of the 2003 CAO, the Discharger has failed to submit the July 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 39 days. Since 15 September 2005, in violation of the 2003 CAO, the Discharger has failed to submit the August 2005 monthly technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 8 days. Since 20 April 2005, the Discharger has failed to submit a regulatory permitting technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 156 days. Since 1 May 2005, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC section 13267 for 145 days. The maximum ACL that can be imposed by the Regional Board under CWC section 13268 is \$1,000 for each day. Therefore, the maximum ACL is \$518,000 (100 + 70 + 39 + 8 + 156 + 145 days times \$1,000 per day).

The maximum ACL allowed pursuant to CWC section 13350 and 13268 is \$3,133,000 (\$2,615,000 + \$518,000). The minimum ACL allowed pursuant to CWC section 13350 is \$52,300.

*Administrative Civil Liability Complaint Order No. R5-2005-0524 (Area 7)*

On 23 September 2003, the Regional Board Executive Officer issued ACL Complaint No. R5-2005-0524 in the amount of \$100,000 to the Discharger for violations of the 2003 CAO, including failure to obtain regulatory permits necessary for cleanup of Area 7 waste, to remove waste from Area 7, submit payment for Invoice Number 42726, to submit monthly technical reports, to submit a regulatory permitting technical report, and to submit an off-site disposal alternative/revised transportation plan technical report. The ACL Complaint No. R5-2005-0524 is greater than the Discharger's economic savings (\$14,352.22) and the minimum ACL allowed pursuant to CWC Section 13350 (\$52,300). The ACL Complaint No. R5-2005-0524 was not paid or settled.

**RESPONSE TO COMMENTS**

Two comment letters were received regarding ACL Complaint No. R5-2005-0524 and R5-2005-0525. The letters are included as part of this agenda item.

### **City of Chico**

Comment: The City states, regarding the 1988 CAO, that their contractor (Baldwin) became the owner of the surplus material placed in Area 8. In addition, the City that a letter from James E. Simmons regarding his permission to place the surplus material on the parcel specifically states “the City of Chico is hereby relieved of any legal responsibility associated with this permission.”

Response: The proposed ACL does not enforce the 1988 CAO.

### **Law Offices of K. Greg Peterson (on behalf of Discharger)**

Comment: Mr. Peterson, on behalf of the Discharger, requests the ACL complaint for Area 7 and Area 8 be modified to include the Simmons and the City. Mr. Peterson states the Discharger “is the only party who has stepped forward to take any action to remediate the contamination, and has done so in hopes that she could eventually persuade the other parties to cooperate and agree on a joint plan to conduct the cleanup.” In addition, Mr. Peterson requests the proposed administrative civil liabilities be reduced to the minimum amount allowed by statute.

Response: The staff agrees that other parties are also responsible for cleanup of Areas 7 and 8, but asserts that it is appropriate to name the Discharger only in the proposed ACL Order because the Discharger made it clear to staff that she was taking responsibility for the cleanup on behalf of other parties. Staff was unaware of any other arrangement with respect to the cleanup or the relationship between the parties. In correspondence dated 24 July 2003, regarding the 2003 CAO, the Discharger states; “This is to notify RWQCB that I would like to keep the City of Chico as lead RP and allow access to my two parcels (AP#011-780-014 and 011-780-018) for the purposes of investigation and cleanup. Should the City of Chico withdraw from their obligation under the AB2061 program I request that I may submit my own Remedial Action Plan.” In correspondence dated 13 February 2004, regarding the 2003 CAO, the Discharger states: “It appears that my efforts have been to no avail and Drake/Simmons must proceed to clean the site themselves. This letter therefore serves to inform you of my intent to comply with the Cleanup and Abatement Order for the properties, AP#011-780-014 & 011-780-018.” In correspondence dated 15 March 2004, the Discharger states: “Please be aware I am committed to cleaning my parcels and returning them to productive use and wish to avoid further delays.” In correspondence dated 14 April 2004, the Discharger states: “It is my intent to have these parcels cleanup up by the end of this summer but as I explained in my previous letter of March 15, 2004 it may not be possible.” The Discharger proceeded with actions needed to clean up the site in the summer of 2005, but in April 2005 stopped all efforts to cleanup the site. As a result, there was insufficient time for other parties to complete the cleanup.

**Declaration of Kenneth R. Stone (on behalf of Discharger)**

Comment: Mr. Stone, on behalf of the Discharger, provides information regarding the partition action, Butte County Superior Court Case No. 129127 indicating that the Discharger and Simmons have no agreement concerning the management of Areas 7 and 8.

Response: In correspondence dated 13 February 2004, regarding the 2003 CAO, the Discharger states; “It appears that my efforts have been to no avail and Drake/Simmons must proceed to clean the site themselves. This letter therefore serves to inform you of my intent to comply with the Cleanup and Abatement Order for the properties, AP#011-780-014 & 011-780-018.” In addition, the title of the Discharger’s RDIP is “Remedial Design and Implementation Plan, Drake-Simmons Properties, Chico, California, prepared for Drake-Simmons Properties, c/o Greg Peterson.....”

**Declaration of Virginia L. Drake**

Comment: Declaration Statement 9, Virginia L. Drake states: “I have never been authorized by the Simmonses to conduct a cleanup of either the Battery Breaker or Stock Pond levee parcels, nor have I ever represented myself as such to the Board or Board staff.”

Response: See response to Mr. Peterson’s comments. In correspondence dated 13 February 2004, regarding the 2003 CAO, the Discharger states: “It appears that my efforts have been to no avail and Drake/Simmons must proceed to clean the site themselves. This letter therefore serves to inform you of my intent to comply with the Cleanup and Abatement Order for the properties, AP#011-780-014 & 011-780-018.”

Comment: Declaration Statement 12. The Discharger indicates the City and Simmons should also reimburse staff oversight costs.

Response: On 19 July 2005, Regional Board staff responded to the Discharger’s request for additional information regarding Invoice Number 42726. It is up to the responsible parties to work out their payment arrangements. The Discharger still failed to submit payment.

Comment: Declaration statements 23 through 25, Virginia L. Drake states “I have searched for reasons to explain why the Board staff is singling me out for punishment, and the only conclusion I can come to is that these are the arbitrary and capricious acts of certain members of the Board staff.” Ms. Drake questions why the 1988 CAO has not been enforced and asserts that staff has treated her in a hostile manner. She also asserts that Board staff has made inappropriate comments about her and have treated her and a member of the staff with whom she has a personal relationship in an unprofessional and hostile manner.

*Response:* With regard with to the 1988 CAO, Regional Board staff provided a written response to Ms. Drake's questions stating that Regional Board staff was deferring enforcement the investigation under 2003 CAO.

With regard to issuing the ACL complaint solely against Ms. Drake, all other parcels at the HRBD have been remediated except for Areas 7 and 8. In staff's view, Ms. Drake indicated in writing that she was taking responsibility for cleanup and the cleanup has not occurred in compliance with the 2003 CAO.

With regard to allegations of Regional Board staff treating Ms. Drake in a hostile manner, staff disagrees with her characterization. Mr. Woodward was the original staff person assigned to this matter. Upon being informed that Mr. Woodward and Ms. Drake had begun a personal relationship, Mr. Woodward was immediately reassigned to other matters and Ms. Clementsen was assigned to this matter. Mr. Woodward was advised that due to his personal relationship with a responsible party for the site that he could not continue to be involved in the regulatory activities at the site. Regional Board staff (including Mr. Pedri) have not exhibited a personal interest in Ms. Drake, treated her in an undignified and unjust manner, nor made any inappropriate comments to others. Nor has Regional Board staff accused Mr. Woodward of inappropriately obtaining personal information on behalf of Ms. Drake. Regional Board staff, including Mr. Pedri and Mr. Woodward, have engaged in friendly office conversation about vacations and weekend activities, but Regional Board staff has not pried into personal details about Ms. Drake. Mr. Pedri did inform Mr. Woodward that the ACL complaints had been issued, as a courtesy to Mr. Woodward since the complaints were a matter of public record and common knowledge.

Regional Board staff did seek public records regarding litigation between Ms. Drake and other owners of Areas 7 and 8 to determine financial arrangements regarding site cleanup prior to preparing the ACL complaints.

## **SUMMARY**

The Discharger's failure to comply with the 2003 CAO Order has serious consequences. The Discharger had the opportunity to cleanup Areas 7 and 8 prior to 15 August 2005 at a reasonable cost in cooperation with other responsible parties at the HRBD. As a result of the Discharger's failure to comply the site will remain in its current state for at least another year, posing a threat to human health and the environment. In addition, the Discharger's failure to comply has wasted considerable Regional Board staff resources and the resources of other agencies in attempting to obtain the Discharger's compliance. Additional efforts will be necessary in the future to obtain compliance. The Executive Officer issued an ACL Complaint in the amount of \$100,000, for Area 7, and an ACL Complaint in the amount of \$125,000 for Area 8. Regional Board staff recommends that the Regional Board adopt two ACL Orders for these same amounts.

## ECONOMIC BENEFIT CALCULATIONS

### ATTACHMENT A – NOVEMBER 2005 STAFF REPORT

#### CONSIDERATION OF ADMINISTRATIVE CIVIL LIABILITY ORDERS FOR VIRGINIA L. DRAKE, TRUSTEE DRAKE REVOCABLE TRUST HUMBOLDT ROAD BURN DUMP AREA 8, APN 011-780-018 AND HUMBOLDT ROAD BURN DUMP AREA 7, APN 011-780-018

<b>PERMIT COST DELAY BENEFIT</b>	
Assumed Interest Rate	=5% per annum
Estimated Application Cost	=\$5,000
Cost for Five Applications	=( $\$5,000 \times 5$ ) = \$25,000
Benefit for Permit Delay	$((\$25,000 \times 0.05)/365 \text{ days}) \times 422 \text{ days}) = \mathbf{\$1,445}$

<b>CLEANUP DELAY BENEFIT</b>	
Area 7	=500 cubic yards of waste estimated
Area 8	=7,500 cubic yards of waste estimated
Total Waste	=8,000 cubic yards (500 + 7,500 cubic yards)
<b>Area 7 and 8, Cost to Class I Landfill, Discharger's Chosen Method</b>	<b>=<math>\\$1,400,000</math> @ <math>\\$175/\text{cubic yard}</math></b>
Area 7 Cost	$= (\$1,400,000 / 8,000 \text{ cubic yards}) \times 500 \text{ cubic yards} = \$87,500$
Area 8 Cost	$= (\$1,400,000 / 8,000 \text{ cubic yards}) \times 7,500 \text{ cubic yards} = \$1,312,500$
<b>Area 7 and 8 Cost to HRBD, Simmons' Chosen Method</b>	<b>=<math>\\$200,000</math> @ <math>\\$25/\text{cubic yard}</math></b>
Area 7 Cost	$= (\$200,000 / 8,000 \text{ cubic yards}) \times 500 \text{ cubic yards} = \$12,500$
Area 8 Cost	$= (\$200,000 / 8,000 \text{ cubic yards}) \times 7,500 \text{ cubic yards} = \$187,500$
From 15 August To 23 September 2005, Assuming Class 1 Landfill	
Area 7	$= ((\$87,500 \times 0.05) / 365 \text{ days}) \times 39 \text{ days}) = \mathbf{\$467}$
Area 8	$= ((\$1,312,500 \times 0.05) / 365 \text{ days}) \times 39 \text{ days}) = \mathbf{\$7,012}$
From 24 September 2005 Until 26 May 2006, End Of School Session	
Area 7	$= ((\$87,500 \times 0.05) / 365 \text{ days}) \times 244 \text{ days}) = \mathbf{\$2,925}$
Area 8	$= ((\$1,312,500 \times 0.05) / 365 \text{ days}) \times 244 \text{ days}) = \mathbf{\$43,870}$

<b>SUBTOTAL COST BENEFIT FOR PERMITS AND CLEANUP DELAYS</b>	
Area 7	$= (\$1,445 + \$468 + \$2,925) = \mathbf{\$4,837}$
Area 8	$= (\$1,445 + \$7,012 + \$43,870) = \mathbf{\$52,327}$

<b>ESTIMATED MONTHLY OR TECHNICAL REPORT COST = 1,000; ASSUMING CONSULTANT CHARGE @\$100/HR AND 10 HRS/REPORT</b>	
Cost Benefit	May, June, July, August 2005 technical reports = (\$1,000 x 4)= \$4,000
Cost Benefit	Regulatory permitting technical report = \$1,000
Cost Benefit	Off-site disposal alternative/revised transportation technical report = \$1,000
<b>SUB TOTAL, COST BENEFIT, TECHNICAL REPORT AVOIDANCE = \$6,000</b>	

<b>REGIONAL BOARD STAFF COSTS</b>
State Water Resources Control Board SLIC Program Invoice Number 42726 = <b>\$3,514.22</b>

<b>TOTAL COST BENEFIT</b>	
Area 7	= <b>\$1,445 + \$467 + \$2,925 + \$6,000 + \$3,514.22 = \$14,352.22</b>
Area 8	= <b>\$1,445 + \$7,012 + \$43,870 + \$6,000 = \$58,327.00</b>